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TAGS: [KJUS](#) [PGOV](#) [PINR](#) [PREL](#) [PTER](#) [CO](#)
SUBJECT: PRELIMINARY ANALYSIS OF CONSTITUTIONAL COURT'S
FULL OPINION ON JUSTICE AND PEACE LAW

REF: BOGOTA 4645

Classified By: CDA Milton K. Drucker.
Reasons: 1.4 (b) and (d)

Summary

¶1. (C) On July 13, the Constitutional Court published its written opinion upholding the Justice and Peace Law. The opinion strengthens the Law in some respects, appearing to place more onerous requirements on demobilized paramilitaries who seek its benefits. AUC lawyers have been scrutinizing the opinion; former paramilitary leaders are expected to comment as early as July 19. It remains to be seen whether longstanding Colombian legal principles will enable paramilitaries to insist the GOC apply the terms of the Law the Congress approved, or the more stringent version announced in the Court's opinion. The 160 page decision of the Court is very intricate, and may leave room for legal argumentation and interpretation that could benefit the paramilitaries. There is discussion within the government about a possible further implementing regulation to resolve ambiguities. End summary.

Justice Strengthened...

¶2. (C) The Court's formal written opinion on July 13 reduced the number of benefits that the Justice and Peace Law (Law 975) had guaranteed the demobilized paramilitaries, strengthening the "justice" side of the Law. Under the Court's ruling:

- A demobilized person is ineligible for benefits if he omits "intentionally or not" a crime from his debriefing or version libre (the Law stated the demobilized could argue his omission was unintentional). If an omission occurs, the Court said the person must be investigated and judged for that crime under ordinary criminal law (Art. 25).

- Those seeking benefits must not only free those that they have kidnapped (what is stated in Art. 10.6), but also

disclose the location of the bodies of those whom he either kidnapped or killed.

- The Prosecutor General's Office (Fiscalia) no longer has to "immediately" notify the Law 975 judge of its intent to formulate preliminary charges until after the Fiscalia has had the opportunity to "thoroughly" complete its investigation (Art. 17). This expands the time the Prosecutor General's Office has to investigate.

- The 18-month credit towards the Law 975 alternative sentence, which the law allowed in Art. 31 for the time spent by the demobilized in a government-selected "concentration zone," is revoked.

- Prisons where the demobilized will eventually serve their sentences must be subject to the same prison rules and conditions applicable to all Colombian prisoners (Art. 30).

- Those subject to the Law will be required to use all illicit and licit assets to repair the damages caused to their victims, as opposed to only illicit assets signaled in the Law (Art. 10.2, 11.5, 13.4, 17, 18, 44, 46).

- Victims have the right to know, to become involved in the investigations, to have access to the Fiscalia's formal case file, and to be present during all procedural stages. The Court also expanded the definition of "victim" under Law 975 to include any family member who can demonstrate a real, concrete claim of injury.

...But Inconsistencies Apparent

¶5. (C) Some discrepancies are evident between the Court's mid-May press releases and its full opinion. Moreover, the Court's legal analysis used to justify this apparent switch in positions does not appear to be compelling. For example:

- Alternative Sentence - A Court press release on May 18 stated it was striking Art. 20 as unconstitutional because setting an eight-year upper limit on sentences would deny justice to victims of crimes for which the demobilized had already been sentenced, in some cases to extensive terms. The Court issued another press statement the following day in which it "clarified" that previous sentences would be "accumulated" and in essence served consecutively, with an eight year maximum term as long as the demobilized abided by Law 975 obligations. In its full opinion, the Court re-stated the eight year upper limit, without explaining the apparent discrepancy between the two press releases.

- Court Appears to Soften Conditions for Revoking Alternative Sentence - The Court said that a Law 975 beneficiary could have his parole revoked if he committed a crime similar to that for which he was convicted. This decision upheld Art. ¶29. However, it was "softer" than the Court's mid-May press releases, which suggested parole could be revoked if the demobilized committed any/any crime.

Seditious Status Pending

¶6. (C) The Court ruled that Article 71 - which sought to make "sedition" a political crime - had failed to go through all of the required debates in the legislature prior to its enactment; therefore, the Court declared it unconstitutional because of procedural errors. In an interview after the Court's May press releases, President Uribe announced that he intended to revive the article.

Para Response Pending

17. (C) Press reports indicated AUC lawyers have been scrutinizing the final text of the Constitutional Court ruling to agree on a unified response. AUC leader Ernesto Baez said there would be no official response to the Constitutional Court ruling until July 19. It remains to be seen whether the longstanding Colombian legal principle of "favorability" will enable the demobilized to insist the GOC apply the (more favorable) terms of Law 975 as approved by the Congress, as opposed to the more rigorous version the Court announced on July 13.

Comment

18. (C) The 160 page decision of the Court is very intricate, and may leave room for legal argumentation and interpretation that could benefit the paramilitaries. There is discussion within the government about a possible further implementing regulation to resolve ambiguities.
DRUCKER